

PLANNING APPLICATION REPORT

REF NO: BR/227/19/PL

LOCATION: 3 Southdown Road
Bognor Regis
PO21 2JS

PROPOSAL: Removal of condition 5 imposed under BR/84/16/OUT (APP/C3810/W/16/3153767) relating to - details of all trees/bushes/hedges to be retained along with measures to protect them during demolition & construction works.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	Removal of condition 5 imposed under BR/84/16/OUT (APP/C3810/W/16/3153767) relating to - details of all trees/bushes/hedges to be retained along with measures to protect them during demolition & construction works.
	The approved development of 2 semi-detached 3 bed dwellings has been implemented and completed.
SITE AREA	0.06 hectares.
RESIDENTIAL DEVELOPMENT DENSITY (NET)	Approximately 33 dwellings per hectare.
TOPOGRAPHY	Predominantly flat.
TREES	Two medium-sized trees on the site (close to the boundary with 3 Southdown Road), one of which is a Tulip Tree (T1) and the other an Ornamental Cherry Tree (T3). There is also a small Acer (T2). The application proposes to remove the Acer. Also on site, there is an Apple Tree (T4) to be relocated and Apple (T5) and Pear (T7) trees to be retained in situ.
	There is a very large Oak tree (T6) in the rear garden of 13 Burnham Avenue, the RPA of which significantly overlaps the development site, and is a third party tree. There are then some small trees in other parts of 3 Southdown Road's garden. The trees on and adjacent to the site are not subject of a Tree Protection Order and the site is not in a Conservation Area.
BOUNDARY TREATMENT	* 2.5m high wall to the boundary with Southover Road, 18 Southover Road, 13 Burnham Avenue & the rears of properties fronting Burnham Avenue; * 1.8m high close boarded fence to no. 5 Southdown Road; * 1.8m high close boarded fence to no. 3 Southdown Road; and * 1.8m high close boarded fence to the side of 15 Burnham

Avenue.

SITE CHARACTERISTICS

Prior to the implementation of BR/84/16/OUT, the site formed part of the curtilage to 3 Southdown Road. It consisted of a lawned area with footpath and planted beds, which had been separated from the property by a fence. Access was provided Burnham Avenue between 13 and 15 and this access led to a car port and garage.

Now that planning permission has been completed, the site consists of 2 x two storey, semi-detached 3 bed dwellings arranged with a staggered building line but broadly in line with the building line of 10-18 Southover Road.

CHARACTER OF LOCALITY

Residential area characterised by two storey terraced houses on Southover Road & nos. 3-13 Burnham Avenue, semi-detached houses at 15-27 Burnham Avenue and predominantly detached dwellings with large gardens in Southdown Road. 1 and 3 Southdown Road are particularly large plots. There is unrestricted on-street parking in Burnham Avenue but spaces are limited.

RELEVANT SITE HISTORY

BR/193/19/DOC	Retrospective approval of details reserved by condition imposed under APP/C3810/W/16/3153767 (BR/84/16/OUT) relating to Condition Nos 5 - trees/bushes/hedges to be retained, 6 - construction method statement, 7 - surface water drainage, 8 - refuse & recycling, 10 - cycle storage (Please note that these houses have already been built).	DOC Part Approved 18-07-19
BR/153/17/RES	Application for approval of reserved matters following outline approval BR/84/16/OUT relating to appearance & landscaping	ApproveConditionally 18-09-17
BR/84/16/OUT	Outline application with some matters reserved for construction of 2 No. 3-bed dwellings & associated works (resubmission following BR/291/15/OUT).	Refused 16-06-16 Appeal: Allowed+Conditions 30-01-17
BR/237/16/OUT	Outline application for construction of 1 no. detached dwelling & associated works	App Cond with S106 04-01-17

BR/84/16/OUT - Outline application with some matters reserved for construction of 2 No. 3-bed dwellings & associated works (resubmission following BR/291/15/OUT). Refused. Allowed at appeal, 30/01/2017.

Condition 5 (trees) as follows:

No development shall take place, including demolition, until details of all trees/bushes/hedges to be retained, along with measures to protect them during demolition and construction works, have been submitted to and approved in writing by the Local Planning Authority. The development shall take place in accordance with such approved details.

BR/193/19/DOC - Retrospective approval of details reserved by condition imposed under APP/C3810/W/16/3153767 (BR/84/16/OUT) relating to Condition Nos 5 - trees/bushes/hedges to be retained, 6 - construction method statement, 7 - surface water drainage, 8 - refuse & recycling, 10 - cycle storage (Please note that these houses have already been built). Discharge of condition 5 (Trees) - Refused 18/07/2019.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Bognor Regis Town Council

Bognor Regis Town Council

Objection (18/09/2019)

- Having regard to ADC's Tree Officer comments, in decision notice dated 18th July 2019 in respect of BR/193/19/DOC, object to the harm/loss of trees and consider that measures to protect them should remain in place.

Objection (13/01/2020)

- Discussed ADC's Tree Officer. Comments within the report included the findings from two site visits by the Tree Officer. It was evident that there had been little regard for implementation of the required ground/tree protection measures and it was too late for any visiting Officer to be confident that no significant damage had occurred to the ongoing health and vitality of retained trees both on and off-site.

Continue to OBJECT to planning application.

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATIONS

Parks and Landscapes

Arboriculturist

CONSULTATION RESPONSES RECEIVED:

ADC Trees Officer -

· I refer in part to previous comments (4th July 2019) in response to BR/193/19/DOC and where I registered an objection to the application to discharge condition 5. This application seeks to remove that condition.

· I stand by my earlier comments and while on and off-site trees may be surviving or indeed flourishing as the applicant states; on the balance of probability, damage would have been inflicted on some of those trees as a direct result of the unauthorised actions taken.

· I have sought technical advice from senior colleagues in our planning department, with specific regard

to the planning process and what options exist for us to progress this matter.

- At this late stage of post-construction, condition 5 can no longer affect the development in the positive way it was intended. As such, it ceases to be necessary, enforceable or reasonable, so will not satisfy the 'tests' for making of conditions as described in guidance within the NPPF.

- As it stands, I see no reason to object to this proposal on arboricultural grounds.

COMMENTS ON CONSULTATION RESPONSES:

Noted. Whilst it is unfortunate the tree/ground protection measures have not been put in place and that process has not been followed during the construction process, given the development is completed, there is no practical purpose to retain the trees condition (5) of the original permission (BR/84/16/OUT) and it would no longer meet the tests of the NPPF being necessary, enforceable or reasonable.

POLICY CONTEXT

Designation applicable to site:

Built-Up Area Boundary
Pagham Harbour Zone B
Bognor Reef SSSI 2km
Felpham SSSI 2km

DEVELOPMENT PLAN POLICIES

[Arun Local Plan 2011 - 2031:](#)

ENVDM4 ENV DM4 Protection of trees

PLANNING POLICY GUIDANCE:

NPPF National Planning Policy Framework
NPPG National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area.

Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation (Reg.14).

There are no applicable policies in the Bognor Regis Neighbourhood Plan.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to comply with relevant Development Plan policies in that it is not necessary to maintain the condition.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

PROTECTION OF TREES

The trees on and adjacent to the site are not the subject of a Tree Protection Order and the site is not located within a Conservation Area. One of the trees, the very large Oak (T6), the Root Protection Area of which significantly overlaps the site, is in third party ownership (313 Burnham Avenue).

In accordance with BS: 5837 2012, trees in relation to design, demolition and construction should be afforded adequate respect and protection. It is also a material consideration in the Town & Country Planning Act (1990).

Paragraph 170 of the NPPF seeks to contribute to the natural and local environment by recognising the intrinsic character and beauty of the countryside, including trees and woodland.

Policy ENV DM4 seeks to protect trees with TPOs, identified as Ancient Woodland, in Conservation Areas, or contributing to local amenity. As such, it was considered necessary and relevant to add planning conditions regarding tree protection for trees on/adjacent the site.

PRINCIPLE

Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

- 1.necessary;
- 2.relevant to planning;
- 3.relevant to the development to be permitted;
- 4.enforceable;
- 5.precise; and
- 6.reasonable in all other respects.

IMPACT ON TREES

The Tree Officer objected to BR/84/16/OUT as there were a number of trees on and near to site that could potentially be affected by the construction/demolition process and no protection measures had been proposed. The application was refused but allowed on appeal (APP/C3810/W/16/3153767). The Planning Inspector attached condition 5 (trees) to ensure the protection of trees, in accordance with the NPPF and Arun Local Plan policy ENV5.

Whilst it is unfortunate that the tree/ground protection measures have not been put in place and that due

process has not been followed during the construction process, given development is completed, there is no practical purpose to retain the condition 5 of BR/84/16/OUT and it no longer meet the tests of the NPPF of being necessary, enforceable or reasonable.

CONCLUSION

The development has now been completed and, as such, this condition is no longer necessary, enforceable or reasonable and as a result can be agreed to be removed.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE

- 1 INFORMATIVE: Except for condition number 5 which has now been removed all other conditions imposed on BR/84/16/OUT shall apply.
- 2 INFORMATIVE: Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

BACKGROUND PAPERS

The documents relating to this application can be viewed on the Arun District Council website by going to <https://www.arun.gov.uk/weekly-lists> and entering the application reference or directly by clicking on [this link](#).

BR/227/19/PL - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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